

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES A. BOYD,

Plaintiff,

V.

RON VAN BOENING, *et al.*,

## Defendants.

Case No. C07-5599 FDB/KLS

ORDER DENYING MOTION  
FOR JUDGMENT EX PARTE

Before the court is Plaintiff's motion for judgment ex parte pursuant to Rules 8(d), 12(a)(1)(A)(B) and 54(c)(d)(2)(A). (Dkt. # 27). Having carefully reviewed the motion, Defendants' response (Dkt. # 29) and the balance of the record, the court finds that the motion should be denied.

## I. DISCUSSION

Plaintiff filed his Amended Complaint on April 1, 2008. (Dkt. # 23). Service was affected on Defendant Suss on April 21, 2008. (Dkt. # 26). Defendants filed an answer to Plaintiff's Amended Complaint on June 20, 2008. (Dkt. # 28).

Plaintiff contends that Defendants have failed to plead or respond to the Amended Complaint and relying on Fed.R.Civ.P. 8(d), 12(a)(1)(A)(B) and 54(c)(d)(2)(a), requests that judgment be entered in his favor. These rules do not govern entry of default.

1        Rule 55, which governs the entry of default, provides for the entry of default when a party fails to  
2 plead or otherwise defend. Fed.R.Civ.P. 55. Defendants have pled and defended by filing an answer on  
3 June 20, 2008. (Dkt. # 28).<sup>1</sup> Therefore, Defendants have not failed to plead or otherwise defend in  
4 violation of CR 55(a).

5        Accordingly, Plaintiff's motion for judgment ex parte (Dkt. # 27) is **DENIED** as moot.

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8        DATED this 25th day of July, 2008.

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12        Karen L. Strombom  
13        United States Magistrate Judge

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<sup>1</sup>As noted by Defendants, Plaintiff's motion appears to be based upon the mistaken belief that  
28 counsel's notice of appearance triggers the time when defendants are required to plead, particularly in  
prisoner civil rights cases, where the court sends a courtesy copy of the lawsuit to the Attorney General's  
Office.